

Division of Consumer Affairs

## News Release

### **TENNESSEE CONSUMERS TO GET MORE THAN \$550,000 IN RESTITUTION AS PART OF MULTI-STATE SETTLEMENT WITH SEARS**

FOR IMMEDIATE RELEASE

September 3, 1997

Checks totaling more than \$550,000.00 for restitution will be distributed among some Tennessee consumers, who will also have their existing debt to Sears, Roebuck and Co. erased as part of a multi-state settlement agreement announced today.

The Tennessee Attorney General's Office and Tennessee Division of Consumer Affairs are part of a nationwide settlement involving the Attorneys General of 50 states, who have claims against the giant appliance and department store for collecting debts in violation of the U.S. Bankruptcy Code and state consumer protection laws. Under the national settlement, Sears is required to:

- forgive up to approximately \$125 million in consumer debts improperly obtained by Sears.
  - repay at least \$125 million in compensation to affected customers, including interest.
  - pay \$35 million to the States, as well as \$5 million to benefit consumer education.
- submit to injunctive relief requiring Sears to change certain of its collection practices.

Under the settlement, Sears must pay Tennessee approximately \$192,473 plus interest to go toward the cost of the investigation, civil penalties and consumer education. Additionally, the company must pay an estimated 805 Tennessee consumers an average of \$470 each as compensation for their payments to Sears for the unlawful debt collection practices. Sears also will forgive an estimated average \$1,140 debt of each consumer affected.

"This is the largest restitution to consumers ever recorded in the Tennessee Attorney General's Office, and we are very pleased with this settlement," Tennessee Attorney General John Knox Walkup said today. "We appreciate that Sears has agreed to cooperate in this case and will change its collection practices in the future."

The State's investigation confirmed that Sears, by threatening to repossess consumer goods, pressured consumers to make payments on debts even after the debtor was discharged in bankruptcy, and obtained the payments without the knowledge of the Bankruptcy Court. For at least ten years, Sears obtained from consumers in bankruptcy reaffirmation agreements (a document in which Chapter 7 debtor agrees to pay a particular debt even though the debt would be discharged in bankruptcy).

Reaffirmation agreements are valid in bankruptcy, provided that the agreements are voluntary and are filed with the bankruptcy court prior to the close of the bankruptcy and subject to the court's review. The State's investigation confirmed that Sears, on a massive scale, obtained reaffirmation agreements but failed to file them with the bankruptcy court, thereby avoiding the court's review.

**Mark Williams, Director of the Division of Consumer Affairs, said, "We hope pre-1992 consumers**

**who were impacted by Sears' practices will contact the settlement administrator by calling 1-800-529-4500 to find out how to file a proof of claim.. The deadline to file a proof of claim is October 8, 1997 so it is very important for consumers to act quickly."**

The settlement requires Sears to continue to identify every affected consumer from January 1992 through the present, and then repay each consumer. Sears' identification and payment process is subject to verification and review by the State Attorney General's Office. Sears customers who signed reaffirmation agreements prior to 1992 also will be entitled to compensation, but must file a claim form with a settlement administrator overseeing the claim process. Likewise, those who signed reaffirmation agreements not filed with the bankruptcy court after 1992, but who have not been identified as such, also may file proofs of claim. Provided that these customers can prove they signed reaffirmation agreements with Sears, they will be entitled to the same compensation as post-1992 customers already identified.

In addition to compensation for payments on their debts and having their debts forgiven, affected customers will also receive a portion of a \$25 million fund established by Sears to further compensate customers for their inconvenience because of the misleading collection practices. The \$25 million fund will be divided among affected customers pro rata based upon the amount of payments each customer made on his/her debt.

Any compensation payable to consumers that is not delivered after good faith efforts to locate the consumer shall be returned to the States, not Sears. In Tennessee, those funds will be delivered to the State Treasurer for treatment as unclaimed funds.

The settlement reached by the Attorneys General also will require Sears to alter its unlawful and unfair collection policies, including an overhaul of Sears' policies in connection with soliciting and obtaining reaffirmation agreements in bankruptcy proceedings.